

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EFFIE FILM, LLC

Plaintiff,

- against -

EVE POMERANCE, a/k/a EVE MOSSEK

Defendants.

11-CV-7087 (JPO)

**DECLARATION OF
ANDREW L. DEUTSCH**

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EVE POMERANCE,

Counterclaim Plaintiff,

- against -

EFFIE FILM, LLC and EMMA THOMPSON,

Counterclaim Defendants.
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ANDREW L. DEUTSCH hereby declares the following under penalties of perjury:

1. I am counsel of record to Plaintiff-Counterclaim Defendant Effie Film, LLC (“EFL”) and Counterclaim Defendant Emma Thompson (“Thompson”). I make this Declaration in support of EFL’s Motion for Judgment on the Pleadings and EFL and Thompson’s Motion to Dismiss the Complaint and for Declaratory Judgment.

Questions As to Which Work Pomerance Claims Thompson Had Access To

2. Under the Court’s Memo-Endorsed Order of January 26, 2012, Defendant-Counterclaimant Eve Pomerance (“Pomerance”) was required to provide EFL and Thompson

with “the version of *The Trials of Effie Gray* which Defendant claims Thompson and Greg Wise had access to,” and “a document identifying any claimed actionable similarities between *The Trials of Effie Gray* and either version of *Effie*.”

3. I provided Marc Lebowitz, counsel for Ms. Pomerance, with the November 28, 2011 final version of the screenplay of *Effie*, which contains the dialogue and indicated action which was shot during the film’s production. (Exhibit 1; filed under seal).

4. On February 6, 2012, Mr. Lebowitz sent me a screenplay entitled “The King of the Golden River by Eve Pomerance (Based on The Secret Trials of Effie Gray).” (“*King*”) Below the title was “Current Revisions by (Pomerance, November 1997).” A copy of this screenplay is attached as Exhibit 2, filed under seal. He stated that he was providing this document to me to comply with the Court’s January 26, 2012 Order. On February 17, 2012, Mr. Lebowitz provided the Court and me with Pomerance’s document identifying claimed similarities (the “Comparison”) (Exhibit 3).

5. There were some unusual disparities between what Pomerance had represented in pleadings and the screenplay that her counsel gave me. Pomerance’s Counterclaim asserted that *Effie* infringed *The Secret Trials of Effie Gray* (as did various letters from Pomerance’s counsel to the Court), not a work entitled “The King of the Golden River.” Answer and Counterclaim ¶¶ 6, 23-27. She further asserted that *The Secret Trials of Effie Gray* had been given a public reading in 1998 at The Script Factory in London, that Greg Wise, Thompson’s husband, played John Ruskin in the reading and received a copy of her screenplay, and that upon information and belief, Thompson attended that reading. *Id.* ¶¶ 9-10.

6. Mr. Lebowitz’s forwarding of *King* raised more questions than it answered. The program for the 1998 reading of Pomerance’s script at The Script Factory, which is attached as

Exhibit A to her Answer and Counterclaim (Exhibit 4), listed the performed work as *The Secret Trials of Effie Gray*, not “The King of the Golden River.” Also, many of the characters listed in the program of the reading do not appear in the *King* screenplay, and many of the characters who appear in *King* do not appear in the program of the reading.

7. When I raised these disparities with counsel for plaintiff in an e-mail (Exhibit 5), he replied that “the draft you have and for which we are preparing a comparison is a subsequent modification based on the Reading Version. Furthermore we believe this version was sent to Ms. [Thompson] through her agent.” (Exhibit 6). However, the Answer and Counterclaim contains no allegations that Thompson was sent or received a copy of the “The King of the Golden River,” from her agent or anyone else. The sole allegation of access is based on Mr. Wise receiving a copy of *The Secret Trials of Effie Gray* for the reading and Thompson attending the reading. Answer and Counterclaim ¶ 10.

8. The document produced by Pomerance’s counsel to me therefore does not match the allegations of her pleading or her other representations to the Court.

9. However, in order to expedite the resolution of this litigation, and because the Comparison fails to make out even a colorable case of substantial similarity, EFL and Thompson will not object to this last-minute switch by Pomerance. They will concede, solely for purposes of their current motions, that Thompson and Greg Wise had access to *King*. Should the Court deny EFL and Thompson’s joint motions, however, EFL and Thompson reserve the right to factually contest that claim of access.

10. Moreover, Pomerance now represents that her claim of substantial similarity is based only on her comparison between *King* and *Effie*. Consequently, if the Court rules against her and finds no substantial similarity between those two works, Pomerance should be estopped

and barred from later claiming that *Effie* infringes any different version of *The Secret Trials of Effie Gray*.

Most of The “Similarities” Claimed by Pomerance Concern Passages of *Effie* That Are Based on Historical Facts or Third-Party Writings In Which Pomerance Has No Rights

Introduction

11. The primary purpose of this Declaration is to provide the Court with historical facts and writings, which the Court may judicially notice, showing that most of the claimed “examples” of similarities in the Comparison arise from Thompson and Pomerance’s use of the same facts or third-party writings. I will also point out where the alleged “similarities” are not similar at all, are trivial, or are based on *scenes à faire* found in many literary works.

12. As shown in EFL and Thompson’s Joint Memorandum of Law in support of their motions, Pomerance may not claim any that similarities between her work and *Effie* are actionable, where the similarities are grounded in historical facts or theories, because these are not protected by copyright right. Nor can she claim infringement based on material in her work, or in *Effie*, which quotes or paraphrases the writings of third parties, because that material is not original to her.

13. The Comparison begins by numbered “Examples,” but eventually Pomerance drops this numbering and uses only headings. The Comparison has no apparent system of organization, but jumps around from topic to topic. It is also highly repetitious, apparently so that Pomerance could inflate the number of claimed similarities. For example, in three separate “Examples”/headings, Pomerance claims that a scene in *Effie*, in which Effie fights with her mother-in-law, copies from her work. As another example, the Comparison claims that *Effie* copies a “pedophilia” theme that Pomerance invented, involving Ruskin and Sophie Gray,

Effie's sister. Pomerance makes this claim in one section (Example 25), then repeats it in another section (the unnumbered heading "Sophie Gray").

14. In drafting this declaration, I have tried my best to avoid repetition by consolidating Pomerance claims on the same topic.

15. Pomerance also repeatedly assert that elements of *Effie* are not historically true. These assertions are almost always incorrect. As the historical sources cited below show, Thompson consistently drew on the letters of the real-life subjects of *Effie*, as well as the writings of Ruskin scholars. Given Pomerance's many false claims of historical inaccuracy, the Court may well conclude that Pomerance has acted in bad faith in claiming that *Effie* infringes her work.

Example 1

16. This example compares dialogue in *King*, scene ("sc.") 73, with dialogue in *Effie*, scs. 113-15.¹ Pomerance admits that the dialogue in the indicated passage in *King* is not original to her but was taken by her from an out-of-print third party book, Vindication of Ruskin, by J. Howard Whitehouse. However, she claims that there is similar dialogue in *Effie* indicates that Thompson copied from the Pomerance work.

17. The assertion that Thompson copied from Pomerance is itself incorrect. Thompson took the dialogue from a published letter by Ruskin to a friend named Furnivall, in which he describes a typical conversation between Ruskin and Gray.² The letter appears in a

¹ Because the pagination in the copy of *King* provided by Pomerance is unclear, we use scene references instead.

² To avoid confusion involving people with the same last name, and between actual people and characters based on those people, both this declaration and the Joint Memorandum of Law will refer to John Ruskin the historical figure and author as "Ruskin." The character of John Ruskin in both *Effie* and *King* will be called "John."

number of in-print historical works, including the two most consulted by Thompson, and which were published many years before the Pomerance screenplay was created: Parallel Lives, by Phyllis Rose, p. 83 (“PL”) (Exhibit 7), published in 1984, and Millais and the Ruskins, by Mary Luytens, pp. 232-233 (“MR”) (Exhibit 8), published in 1967. In any event, Pomerance cannot claim any copyright in Ruskin’s own words, even had Thompson taken them from the same work Pomerance consulted.

18. Ruskin’s own invented dialogue involves him talking to Gray as she looks out a window. The fact that both *King* uses Ruskin’s words by showing Effie looking out the window and John talking to her, using Ruskin’s dialogue, does not involve any creative input by Pomerance. Thompson was free to use the same dialogue for *Effie*, and to visualize it in the manner suggested by Ruskin’s words (“Effie is looking abstractedly out the window”): Effie looking out the window and John talking to her. The fact that it is raining in both scenes is hardly an actionable similarity: rain is a common feature of English climate and movies set in England, and the use of exterior rain to create scenes of tension or atmosphere in a room is common in motion pictures.

19. The two scenes are otherwise entirely dissimilar. In *Effie*, the Ruskin-derived dialogue is followed by a sexual approach by Effie to John. This is immediately followed by Mrs. Ruskin (having observed some of the prior scene) trying to force a sedative on Effie, Effie pushing the pill away, and a physical struggle ensuing between the two women. Mr. Ruskin enters the room as Effie pushes Mrs. Ruskin into the fireplace. (Scs. 113-14). In contrast, in *King*, additional dialogue between John and Effie continues for several minutes after the words

The historical figure Euphemia Gray Ruskin will be called “Gray” or “Effie Gray” (when reference is also made to her sister Sophie Gray); the fictional character will be called “Effie.” The fictional character of Margaret Ruskin, Ruskin’s mother, will be termed “Mrs. Ruskin,” and the fictional character of John James Ruskin, Ruskin’s father, who appears only in *Effie* screenplay, will be called “Mr. Ruskin.”

taken from Ruskin's letter. (Sc. 73). There is then an apparent passage of hours, which include a scene of Mrs. Ruskin tending to an ill John, and in which he falsely asserts that Effie will not have sexual relations with him. (Sc. 75). Effie overhears this; Mrs. Ruskin goes to Effie's room; and a non-physical confrontation then takes place between Mrs. Ruskin and Effie over John's lying. (Sc. 78).

20. The hostility between Effie on the one hand, and John and his parents on the other, was not invented by Pomerance, but was a historical fact. Ruskin himself acknowledged the hostility in the same letter to his friend Furnivall mentioned above (MR, p. 233 (Exhibit 8)), as did the historian Phyllis Rose (PL, p. 83 (Exhibit 7)). Rose graphically describes the "protracted battle" between Gray and Mrs. Ruskin, including an actual historical scene where Gray objected to Mrs. Ruskin giving Ruskin a pill, and which Thompson used as the source for the scene. (PL, pp. 61-62 (Exhibit 9)).

21. Finally, Pomerance claims in Example 1 that she created the concept of Effie feeling like a prisoner in the Ruskins' house, and that Thompson had copied this idea. While the idea is not protectable, it also is not original to Pomerance. It was stated clearly by Phyllis Rose, who wrote that the real Gray saw herself as "the heroine of a Gothic novel, trapped in a castle where everyone is hostile to her, trying to drive her mad." (PL, p. 83 (Exhibit 7)).

Examples 2-3, 5, 10

22. Pomerance claims actionable similarities because in *King*, John uses the word "perfect" once and Effie uses it once, and "perfect" is also used in *Effie*. Pomerance repeats this "perfect" contention in a number of her "examples," again apparently in order to inflate their number.

23. The two works could not be more different in their approach. “Perfect” is a stray line of dialogue in the Pomerance work. In contrast, in *Effie* artistic perfection versus reality is a dominant concept; indeed, the entire script is in many ways a study of the terrible consequences of the desire for humans to be perfect.

24. In *Effie*, John considers Effie to be perfect until he is disgusted by the reality of her human body. Perfection is discussed in the first scene between young Effie and John as they contemplate the statue of a nymph. (Sc. 2). It is at the core of John’s constant sketching of Effie before their wedding night, in which he seeks to capture her ideal (scs. 3, 7, 9, 11), and the depiction of which is derived from historical fact: Gray’s own letter describing Ruskin’s many sketches of her (reprinted in The Ruskins and The Grays (“RG”), Mary Luytens, ed., p. 35 (Exhibit 10)). It is seen in John’s pronouncing Effie “perfect” on the wedding night before she disrobes. (Sc. 29). Perfection is recalled when Effie tries to remind John of their early meeting and “two scoops of perfection,” (sc. 105), and when John asks whether the canvas that Millais will use for his portrait is perfect. (Sc. 121). When Millais injures his nose, he is concerned, as he uses his own face as a model; but Effie pronounces his nose “perfect again.” (Sc. 132).

25. Even at the end of the screenplay, when Effie has consulted a doctor and then a lawyer for an annulment, the lawyer quotes the doctor as saying “the usual signs of virginity are perfect.” (Sc. 162). This is taken verbatim from the actual medical examination of Gray. (MR, pp. 218-19 (Exhibit 11)).

Example 4

26. Pomerance claims that there is an actionable similarity between a line she wrote for John “When drawing nature, you must look beyond what the eye can see,” (sc. 13) and Thompson’s line for John speaking to the pre-Raphaelites, “Paint what you see.” (Sc. 8).

27. The two lines of dialogue are not similar; in fact they clearly have opposite meanings. Pomerance's line is historically inaccurate, while Thompson's is historically correct. In 1851, Ruskin published a pamphlet, "Pre-Raphaelitism," in favor of the Brotherhood, in which he urged artists to paint from "Nature." (Tim Hilton, John Ruskin, p. 156 (Exhibit 12)). The Pre-Raphaelites themselves proclaimed that among their aims was to paint subjects "directly from nature of life, as realistically as possible." (See "Pre-Raphaelite Aims," available at <http://pre-raphs.bmagonling.org/who/the-aims-of-the-group.html> (Exhibit 13)).

Example 6

28. Pomerance claims similarities between a scene in *King*, where John teaches Effie to draw flowers, and a scene in *Effie* where Millais teaches Effie to draw flowers. There is no similarity in dialogue or in concept. In *King*, John guides Effie's hand across her own painting, commenting on the delicacy of the flowers used as models. In *Effie*, Millais watches Effie sketch a jug of flowers, and tells her that the secret is to know when to stop. Pomerance's use of flowers is in any event not creative, as flowers are obviously a common subject for painting, particularly for those learning to paint.

29. Moreover, Pomerance's claim that the drawing scene in *Effie* is copied from her is simply false. Thompson based her scene on the historical fact that Millais taught Gray to draw and paint. In a letter quoted in MR, p. 78 (Exhibit 14), Millais wrote: "The only pleasure is teaching [Effie] drawing. . . . She has drawn and painted some flowers in oil . . . almost as well as I could do them myself. If it was not for her being such a captivating person I should feel disgusted with such aptitude."

Example 7

30. Pomerance claims that her scene and dialogue showing Effie and John after their wedding, en route to Denmark Hill, has the same treatment and very similar dialogue.

31. In fact, the scenes and dialogue are very different. In *King*, Effie promises that she will “always look as [she does now,]”. (Sc. 30). In Thompson, John promises that he will always be well (in health) having her, and she pertly promises back to “never to wear anything excessively yellow.” (Sc. 15).

32. Thompson’s dialogue is again based on historical fact. In a letter to Ruskin, Gray wrote that she will “promise never to wear an *excessively* Pink Bonnet which can be seen all over the Exhibition.” (RG, p. 89 (Exhibit 15)) She will avoid pink, which is a “very favourite colour of mine . . . out of respect to your superior discernment in these matters.” (*Id.*). John’s statement that marriage to Effie will be good for his sickly health is based on a letter Ruskin wrote to Gray a year before the marriage, saying that he should have become engaged to her long ago, “it would at any rate have saved me from much loss of health”. (RG, p. 41 (Exhibit 16)).

Example 8

33. What happened on Ruskin and Gray’s wedding is undoubtedly the central episode in the Ruskin-Gray-Millais saga. It is covered in every historical discussion of their story, and likely in every artistic portrayal. Not surprisingly, it is an important scene in both the Pomerance and Thompson screenplays, although much more emphasized in Pomerance.

34. In any event, the event is a matter of historical fact. Gray, in a letter, recounted that years after the marriage, Ruskin confessed to him that when he saw her naked he could not sleep with her because “he had imagined that women were quite different to what he saw I was,

and that the reason he did not make me his Wife was because he was disgusted with my person the first evening 10th April.” (MR, p. 156 (Exhibit 17)).

35. Why Ruskin was repulsed by the sight of Gray naked and refused thereafter to have sexual relations with her has been greatly debated by many historians. There has been speculation that he was repelled by her pubic hair or menses. *See, e.g.*, PL, p. 56 (Exhibit 18); Suzanne Fagence Cooper, The Model Wife, p. 43 (Exhibit 19). Pomerance cannot claim ownership rights in any of these theories.

36. Pomerance claims copyright in her script’s depiction of Effie disrobing on the wedding night, and asserts that Thompson copied this depiction. The few coincidences between the two scenes are tangential at best. Effie is shown disrobing and partially nude in both screenplays; but that she disrobed is historical fact. (RG, p. 185 (Exhibit 20) (letter from Ruskin to Effie stating that he is “look[ing] forward to . . . again draw[ing] your dress from your snowy shoulders”)) Moreover, that this would only be depicted as partial nudity on the screen is not a creative choice – it is, rather, a matter of taste and the need to avoid a restrictive rating from the MPAA and other rating authorities.

37. Moreover, that Pomerance and Thompson both show Effie’s physical perfection from the viewer’s point and John’s breathless reaction to her (Ruskin in real life was sheltered and many think he died a virgin) is not an actionable similarity of expression. Such depiction would be part of the expected dramatic development of the historical facts which include John’s arrested or repressed sexual development, and the apparent fact that he had never seen a live woman naked before.

Example 9

38. Pomerance claims that in two scenes of her screenplay, Effie is portrayed showing off a dress from which John reacts with shock. She asserts that Thompson copied the scenes from her.

39. First, the scenes are not remotely similar. In *Effie*, Effie is shown excitedly dressing for the Royal Academy dinner. With the silent concurrence of the Ruskin's maid Anna who is hostile to Effie, she dons a pink dress. The pink dress shocks the Ruskin family (not just John), not because it is sexually alluring, but because it is entirely out of place for such an august occasion as the Royal Academy dinner. She is made to change into a dark dress. (Sc. 55). Thompson's use of Effie's use of pink as an eye-catching color is firmly rooted in history; as noted at paragraph 32 above, it was Gray's favorite color and she wrote of wearing an excessively pink bonnet that could be seen "all over the Exhibition."

40. In the Pomerance screenplay John and Effie are in Venice, about to attend a ball. Effie has donned a low-cut dress in the style of the court of Louis XIV. She is heavily made up. John's reaction is disgust. He says that she looks like a "vulgar whore," and orders her to wear a more restrained outfit. (Sc. 61). In a second Pomerance scene, Mrs. Ruskin has tricked Effie into wearing one of her own dresses, and when she shows it off to John, he is angry because he thinks she has stolen it from his mother. (Sc. 38). It is self-evident that the expression of the two screenplays is entirely different.

41. Thompson's treatment of how Effie dresses, and the hostile reaction of the Ruskins to her dress, is solidly rooted in historical fact. Rose recounts that Gray was constantly berated by the Ruskins for her choice of clothes, "Nothing she did was right: she dressed too loudly." (PL, p. 69 (Exhibit 21)). Mr. Ruskin complained in a letter to Mr. Gray that Effie

should have “dressed much more quietly,” and that her time was divided “between her husband and her Dress.” (Mary Luytens, Effie in Venice, p. 289 (Exhibit 22)).

Example 11

42. Pomerance claims that her screenplay invented the concept that Effie desired to have her own home away from the Ruskins and that “Mr. and Mrs. Ruskin did not in reality live with John and Effie till much later in marriage.”

43. Pomerance either does not know history or is dealing with the Court in bad faith. According to The Ruskins and the Grays, the chapter following “The Wedding” is “Home to Denmark Hill” – the elder Ruskins’ house. (RG, p. 108 (Exhibit 23)). After the marriage, and about two weeks of honeymoon, Ruskin and Gray moved into Denmark Hill on April 27, 1848. (RG, pp. 110-11 (Exhibit 24). They lived there (RG, p. 120-21 (Exhibit 25)) until they traveled to Normandy in August (RG, pp. 128-29 (Exhibit 26), 133 (Exhibit 27)), then returned to Denmark Hill in October. (RG, p. 165 (Exhibit 28)). They moved into their own house on November 2, 1848 (RG, p. 167 (Exhibit 29)), but returned to Denmark Hill for the holidays. (RG, p. 173 (Exhibit 30)).

44. Gray’s desire to live apart from the elder Ruskins, so that Ruskin would not be under his parents’ domination, is well documented in the historical record. Mr. Gray sent a letter to Mr. Ruskin suggesting this (RG, p. 218 (Exhibit 31)), which Mr. Ruskin rejected, accusing Mr. Gray of putting foolish ideas of independence in his daughter’s mind. (RG, p. 229 (Exhibit 32)).

45. Pomerance is also wrong in claiming that she invented the idea of Effie’s feeling free when she is alone with John in Venice. This is another fact noted by historians. As stated in

PL, Gray suggested to Ruskin that they live in Venice: “Her plan was to escape the senior Ruskings, whom she believed to be at the root of her problems with John . . . They were happy in Venice . . . the absence of the elder Ruskings was surely an important factor in their happiness.” (PL, p. 71 (Exhibit 33)).

46. The actual scene in Thompson, in which Effie expresses her desire for her own home (sc. 41), paraphrases letters that are published in The Ruskings and The Grays:

<i>Effie</i>	<u>The Ruskings and The Grays</u>
(Sc 41) I know, I know. But alone I shall love to keep house for you. Our own house. With a good sized nursery. In town, to retain some hold of good society.	(Letter from Mr. Ruskin to Mr. Gray, RG, p. 144 (Exhibit 34)) “I hope there is no undue pride in my desiring the couple to retain some hold of good society. ”
And we will lunch on sole and shrimp sauce, pheasant and mutton – every day if you request it.	(Letter from Gray, RG, p.170 (Exhibit 35)) At their home, Effie “gave them sole and shrimp sauce, Pheasant and bacon . . with game, mutton and vegetables. . . which we have every day at John’s request. ”

47. Thompson’s screenplay is rooted in actual historical fact as well. In real life, while Ruskin and Gray had their own house, while they were in the London area during their married life they lived in the Ruskings’ house, or nearby (at Herne Hill), for all but about six months. Ruskin ended up returning to work in his old study at Denmark Hill even when living

elsewhere, he and Gray often dined at Denmark Hill, and Effie was only given the Ruskin carriage to go into London once a week. (PL, p. 77 (Exhibit 36)). Because the feeling of Effie's oppression by her parents-in-law, and her desire for independence, is central to *Effie*'s plot, Thompson condensed the facts and depicted Effie and John as continuously living at Denmark Hill.

Example 12

48. Pomerance claims that she invented a "power struggle" between Effie and Mrs. Ruskin that is copied in *Effie*.

49. There is only tangential similarity of concept between the scenes cited by Pomerance in *King* and *Effie*: essentially the idea that Effie wants to be useful to John in his work, but that this desire is thwarted. However, the two screenplays show very different reasons for Mrs. Ruskin's actions. In Pomerance, there actually is a "power struggle" from the very beginning. Mrs. Ruskin is depicted as not only over-dominating but evil and jealous of her new daughter-in-law. She tries various underhanded ways to subvert Effie in John's eyes (stealing the manuscript of "The Stones of Venice," giving it to Effie and suggesting that she write her name in it, having Effie wear one of her own dresses because John will think Effie stole it, *etc.*).

50. Thus, the scene from Pomerance that Example 12 cites shows that Mrs. Ruskin (who has always copied out John's notes) becomes jealous when John reveals that he will be taking Effie alone to Venice where she will assist him in note taking.

51. In Thompson, however, there is no "power struggle." There is tension and conflict, but it arises from the fact that Effie, having just moved into Denmark Hill, and having just become a wife, is anxious to know what a wife's duties may be. She looks for some way to be busy and useful for her husband, but there is no outlet for her. Mrs. Ruskin will not let her

work in the garden, and rejects the idea that Effie can help John with notes or sharpening pencils, because Mrs. Ruskin considers her son a genius who has always worked alone. John is indeed a solitary worker and tells Effie that she cannot help. She cannot cook (there is a family cook) or sew for him (the maid tries to pull a torn garment away from Effie when she wants to mend it and Mrs. Ruskin regards mending as servant's work).

52. Thompson drew on historical fact in showing Effie as wanting to help John with his work, and in the scene from *Effie* cited in Pomerance's Example 12, where Effie demands John to tell her what he wants from the marriage, and he responds, "Our marriage is the greatest crime I have ever committed." Gray wrote, in a letter quoted in MR, p. 128 (Exhibit 37), that she told Ruskin, "I was quite ready to do anything he might desire and help him in his work . . . John proceeded to say that his marriage with me was the greatest crime he had ever committed in acting in opposition to his parents."

53. Historical fact also supports what Thompson showed in *Effie*: John denied Effie the only other role that Victorian women were allowed to assume, motherhood. The historical record shows that Ruskin did not like children, thought if Gray and he had children, they would hinder his work, and was concerned that once Gray was pregnant or nursing, she would no longer be able to accompany him on his travels abroad. (PL, p. 55 (Exhibit 38)).

Example 13

54. Pomerance claims that she invented the concept of "Oedipal relations between Margaret and Ruskin," and an "oedipal love triangle reminiscent of "Jane Eyre" and "Rebecca," and that this concept is copied in *Effie*. She also claims that she invented the idea of Mrs. Ruskin touching her son constantly.

55. As shown in the Joint Memorandum of Law, these concepts are certainly not within the protection of copyright. The theory of a sublimated oedipal relationship between Ruskin and his mother is not original to Pomerance. *See, e.g.*, PL, p. 57 (Exhibit 39) (describing Ruskin as “a man . . . whose mother followed him to Oxford, taking lodgings there for the term, and saw him every evening after dinner as well as for prayers on Sundays”). Even if the thought were original, it would at most be a psychological theory to explain the strains between Mrs. Ruskin, John, and Effie. Others would be free to adopt the theory and develop it in their own creative manner. Likewise, Pomerance cannot claim any copyright in the use of allusions to other films and books such as “Jane Eyre” and “Rebecca.”

56. Moreover, the extreme affection shown by Mrs. Ruskin to her grown son, her concerns about his sickly health, her efforts to nurse him through illness, and her habit of physical contact with him are not original to Pomerance. These are instead all well-documented historical facts.

57. For example, Gray discovered what was essentially a love poem from the mother to the son, which she described as being “in a style almost of amatory tenderness, calling John her beloved and Heart’s Treasure and a variety of other terms which only, I believe, a lover would do in addressing a Sonnet to his Mistress...” (Tim Hilton, John Ruskin, p. 170 (Exhibit 40)). Gray noted Mrs. Ruskin’s propensity for touching Ruskin; as she stated in one letter, “John was in his study and his Mother fondling him and going on in her usual style...” (MR, p. 139 (Exhibit 41)).

58. Pomerance asserts that Ruskin “seldom got sick,” but Thompson’s depiction of Ruskin as often sickly is historically true. There are many documented instances of his sickliness and hypochondria: his fear at college that he had contracted consumption (Kevin

Jackson, The Worlds of John Ruskin, p. 35 (Exhibit 42)); and Gray's description in a letter that Ruskin's parents fuss over his health, tell him that he must stay away from damp, and that he begins to cough when they ask him how he is, and constantly offer him remedies. (RG, p. 127 (Exhibit 43)). While both Pomerance and Thompson show that John allows himself to be cosseted and nursed by his mother, this is fact, not fiction.

59. While both screenplays show that the Ruskins did not think Effie was suitable for John, this is also historical fact. Mr. Ruskin, in a letter to a friend, described Grays as "rather forced on us" and that "we consented, though disliking the restless undomestic character of the girl." (MR, p. 280 (Exhibit 44)).

Example 14

60. Pomerance claims that a scene in *King* of John sneaking a look at Effie is similar to a scene in *Effie* of John looking at Effie and her smiling back. The only thing these scenes have in common is John looking at Effie – something that any writer would have included many times in a movie in which John and Effie are the principal characters. This shows that many of Pomerance's alleged similarities are trivial at best.

Example 15

61. Pomerance claims that there is a "similar tone and characterization" between the scene in *Effie* where Effie is introduced to George, his manservant, and the scene in *King* in which Effie is introduced to Joseph, one of the Ruskins' many servants (in *Effie*, for dramatic reasons, the Ruskins are shown as having only have a few servants). There is no similarity. In *King*, Effie is depicted as being shy in meeting the large staff. In *Effie*, it is George who is shy in meeting Effie, not the other way around (this ultimately feeds into Thompson's fictional depiction of George as the only person in the Ruskin household who is kind to Effie).

62. The scene in Pomerance's work is not original to her; it simply shows historical facts. Gray was "royally received" when she first arrived at Denmark Hill, with the servants lined up at the door to meet her and Ruskin. (RG, p. 110 (Exhibit 24)).

Example 16-17

63. Pomerance finds an actionable similarity in the fact that in both scripts, following Effie's arrival at Denmark Hill, she is introduced to the "butler" (in *Effie* this is actually George, John's manservant), is shown a painting over the family mantelpiece, and is instructed to change for dinner. The painting (a Venetian scene by Turner) actually existed; in one of her letters Gray describes seeing it at Denmark Hill (RG, p. 33 (Exhibit 45)); and the family dined with Gray the night she first arrived at Denmark Hill. (RG, p. 111 (Exhibit 24)).

64. The dialogue in *Effie*, however, is not similar to the dialogue in *King*. Overall, the sequence is what one would expect in the way of dramatic exposition when the new bride arrives for the first time at her overbearing parents-in-law's mansion. That Anne (on whom the character Anna in *Effie* is based), the maid assigned to Gray, disliked Gray and was disliked by her is recorded in Gray's letters. (*Effie in Venice*, p. 315 (Exhibit 46) (Gray describing Anne as her "bête noir")).

Example 18

65. Pomerance finds actionable similarity in the fact that both films show Ruskin looking and winding his watch, and in both one hears the sound of a clock ticking on the soundtrack. This is again trivial at best. Victorian novels and movies set in the pre-wristwatch era are filled with scenes of people checking or winding pocket watches. The sound of a clock ticking on a soundtrack is a garden variety means of showing boredom or loneliness. Pomerance claims that Ruskin's watch is a "character in Pomerance's script," and makes numerous

appearances. This may be so, but in *Effie*, to paraphrase a saying attributed to Freud, sometimes a watch is only a watch. In *Effie*, Ruskin is shown with his watch exactly twice, and both times the watch is only a prop. Once, he winds it prior to his wedding night; the other time he looks at his watch because he is frustrated at Effie's delay in getting ready to go to the Royal Academy and says "We will be late." (Sc. 55).

Example 19

66. Pomerance claims that *Effie* is similar to her work in that both depict the Denmark hill house as "very dark, with heavy furnishings" and funereal in tone. Any similarity is founded on historical fact. Like many Victorian manors, Denmark Hill was indeed dreary, with dark colorings and over-furnished with heavy wood furniture typical of the era. Much of the original furniture is on display at Brantwood, the Ruskin museum, and pictures of these are attached as Exhibit 47.

67. There is no "death imagery" in *Effie*. The one atmospheric reference to a scene being "still as the grave" refers to silence, not death.

68. The "darkness" of Denmark Hill also serves a dramatic purpose for *Effie*. It shows the oppression that Effie feels in Denmark Hill. It highlights her disappointment as it follows an earlier scene when she excitedly tells her sister she is leaving "dreary old Scotland" to enjoy the parties of London. It also contrasts with the light and airy quality of the later scenes in Venice, and the freedom Effie feels there.

Examples 20-20a, 26

69. Although the significance of Example 20 is unclear, Pomerance appears to be claiming that in real life Gray and Mrs. Ruskin got along well during the engagement and early days of the marriage, but that in both *King* and *Effie*, their first meeting is shown as cool and

distant. This again, is hardly an actionable similarity. Both motion pictures have limited time to tell their story, and focus on the actual historical hostility between Effie and Mrs. Ruskin. It is to be expected that any dramatic treatment of this relationship would plunge quickly into that hostile relationship, rather than lingering on early days when matters were not so tense.

70. Pomerance's statement that in *Effie*, "Effie is being systematically poisoned and driven mad with laudanum" (repeated in Example 26 and again in the unnumbered heading "Margaret tries to medicate Effie...") is simply false. In *Effie* Mrs. Ruskin does give Effie a sedating pill (which the screenplay says Mrs. Ruskin herself takes) that contains laudanum (an opiate). (Sc. 117). There is no suggestion of poisoning. A doctor in the film calls this a "perfectly sensible treatment, but in this case-." There is no suggestion in *Effie* that Effie's hair loss or hallucination of seeing tree bark growing on her was caused by the pills, or that there is an effort on the part of Mrs. Ruskin or John to drive her mad. Rather, the Ruskin family ultimately does believe Effie to be mad. (Sc. 153-54).

71. Moreover, the character of Mrs. Ruskin, while the co-villain of both movies (with John) is substantially different in the two works. In *Effie*, she is depicted as disdainful, overbearing and callous toward Effie, but not wicked. In the Pomerance work, Mrs. Ruskin is essentially evil and jealous, and sets Effie up on several occasions so that John will distrust and eventually hate her (*see* the discussion of the manuscript and dress scenes above). Even in Example 20a, Pomerance says that Mrs. Ruskin moves "soundlessly, like a snake."

Example 21

72. Pomerance claims that the scripts are similar because in two scenes of her screenplay, Effie watches John sleep, and in one scene of *Effie*, there is a reference to Effie watching John sleeping. The "similarity" is trivial, and in any event the scenes are markedly

different. In Pomerance, the “sleeping” scene happens many days after the wedding night which is depicted as taking place on their honeymoon, not at Denmark Hill. Effie awakens John, and attempts to touch him; he is startled and shouts at her, then apologizes. (Sc. 35-36). In *Effie*, the reference to sleeping takes place in Denmark Hill on the morning after the disastrous wedding night. There is great strain between the new couple as they cannot bring themselves to speak about what actually occurred. Instead, they talk about whether they slept, and she says she watched him sleep – she is trying to show that she loves him. (Sc. 36).

Example 22

73. Pomerance claims that she invented the depiction of Effie as childlike, that “this was not true in real life,” and that Thompson copied this depiction and Mrs. Ruskin’s treatment of Effie as a child.

74. Again, history disproves Pomerance. Gray was 19 in 1848 when she married and arrived at Denmark Hill. Gray and Ruskin are constantly referred to as the “children” or as a “child” in the elder Ruskins’ letters. Mr. Ruskin wrote Mr. Gray as referring to Effie’s “struggles for a childish authority” and his wife’s wish for a “entire Daughter.” (RG, p. 229 (Exhibit 32)). Mrs. Ruskin wrote a letter to Effie, closing “God bless you, My dear child.” (RG, p. 77 (Exhibit 48)). Effie complained in a letter that the Ruskins treated her as “a fool or a child.” (MR, p. 30 (Exhibit 49)).

75. That John was infantilized by his mother was not invented by Pomerance, it is also a matter of solid historical fact. *See, e.g.*, PL, p. 57 (Exhibit 39).

Example 23

76. Pomerance claims an actionable similarity because in *Effie*, John tells Effie that “I have seen what you try to hide,” while in *King*, John tells Millais that he knows of his affair with Effie. As with many other of Pomerance’s “examples,” the two scenes are not similar at all.

77. The dialogue in *Effie* which Pomerance cites is based on fact: Ruskin’s practice of writing down everything that could be used against his wife, which Millais in a letter decries as unmanly (MR, p. 123 (Exhibit 50)). In *Effie*, John’s threat to Grey, “Do you really want to lose your reputation in the world? You would make a great piece of work for your bankrupt father,” is taken directly from a letter written by Gray, in which she recounts that Ruskin said to her that if she left, “you would make a great piece of work for your Father and go home and lose your position.” (MR, p. 185 (Exhibit 51)).

Example 25 [There is no Example 24]; and Unnumbered Section “Sophie Gray”

78. In Example 25, Pomerance claims that Thompson copied her imagined “Sophie Gray and Pedophilia sub-theme.” She largely repeats the same claims in an unnumbered section. Whether or not Pomerance views Ruskin as a pedophile is a theory of history or psychology which is not protected by copyright. In any event, *Effie* does not state or suggest that Ruskin is a pedophile. Moreover, the character of Sophie is substantially more important, and treated differently, in Thompson’s screenplay, so there is not any material similarity.

79. As a historical fact, Ruskin, who was clearly emotionally immature, was drawn to young girls: to the young Effie Gray; and to her sister Sophie, who was ten when she visited Denmark Hill.³ (PL, p. 57 (Exhibit 39) (describing Ruskin as “preferr[ing] little girls to grown women.”)).

³ *Effie* varied from Sophie Ruskin’s historical age, not to copy Pomerance, but for practical reasons: to avoid the expense and audience confusion that would follow from casting a four-year old actress as Sophie, another actress

80. Later in life, Ruskin fell in love with Rose La Touche, who he first met at the age of nine when he tutored her in drawing. He proposed marriage to Rose on her eighteenth birthday, but she refused to marry him. (*The Worlds of John Ruskin*, p. 91 (Exhibit 52)). Rose had “the body of a girl” and had “never become fully adolescent.” (*John Ruskin*, p. 381 (Exhibit 53)).

81. Whether Ruskin was attracted to the simplicity and idealism of young girls, and sought their friendship without the thought of sex, or whether he had pedophilic motives, is a theory which can be debated, but Pomerance cannot claim any copyright in either side of the debate.

82. Pomerance does appear to suggest the theory that Ruskin is a pedophile. In her screenplay, John takes Sophie to wash her hands, and “fans out her little fingers, as if fascinated.” (Sc. 109). She next has a scene where Effie find the door to Sophie’s room closed (which Pomerance’s screenplay says is “unusual” (sc. 113)), and opens the door to find John, a “large dark shape,” in Sophie’s bed, holding Sophie asleep in his arms. Effie is “very disturbed” by this sight, and John looks up at her “guiltily” and “shrinks away from the room like a criminal.” (Sc. 114).

83. In *Effie*, in contrast, there is no hint that John is sexually attracted to Sophie. The scene in *Effie* (sc. 153) which Pomerance describes as “Ruskin seducing Sophie” (unnumbered example) has nothing to do with sex. Rather, this and the following scenes (scs. 154-55) show John and Mrs. Ruskin trying to use Sophie as a weapon against Effie, whom they have come to hate, and seeking to turn Sophie’s affections away from her sister. This includes treating her as a confidant and telling her how bad her sister is. Most of the scenes in *Effie* involving Sophie in

to play Sophie at ten, and yet another actress to play Effie at age eleven (in the beginning of the movie, when she first meets John). By establishing Sophie’s age at Effie’s wedding as eight, Thompson allowed the same young actress to play Sophie both at the wedding scene and at the end of the film.

the Ruskins' house come directly from letters written by Effie Gray, recounting things her sister told her about what the Ruskins and John Ruskin had said to her:

<i>EFFIE</i>	Source Documents
<p>He hands Sophie a copy of "The Stones of Venice"</p> <p>SOPHIE</p> <p>That is a big book.</p> <p>JOHN</p> <p>And then I shall write a book - so big -</p> <p>He indicates a very large book indeed.</p> <p>JOHN (CONT'D)</p> <p>- and it will be all about your sister's conduct. About her wickedness. But do not tell her, for then she would hate you, and you don't want that, do you? (Sc. 153).</p> <p>Sophie makes a small eating sound and Mrs Ruskin turns on her.</p> <p>MRS RUSKIN</p> <p>Don't do that, dear. It makes you sound like an imbecile (Sc. 150).</p>	<p><i>Effie Gray letter quoting Sophie Ruskin's recounting of what John Ruskin had said to her:</i></p> <p>He would write a book - so big - about [your] conduct to get a divorce from [you] tomorrow. (MR, p. 141 (Exhibit 54)).</p> <p><i>Effie Gray letter quoting what Mrs. Ruskin had said to Sophie Gray:</i></p> <p>You had better not tell Effie these things, dear, for she would hate you and then you would be sent home. (MR, p. 143 (Exhibit 55)).</p> <p><i>Effie Gray letter about her sister at the Ruskins:</i></p> <p>She makes a little noise with her mouth when eating and Mrs R told her not to do that as it was proof of being imbecile. (MR, p. 166 (Exhibit 56)).</p>

84. Pomerance asserts in her "Sophie Gray" section that *Effie* is not historically true in showing Sophie coming into the Ruskin household as protection for Effie. Pomerance is again misrepresenting. Protection was in fact the purpose of having Sophie go to the Ruskins. Millais suggested exactly this in a letter sent to Effie's mother, stating "...you will avert many disagreeable casualties, and greatly increase your daughter's comfort by *permitting always one, or other, of her sisters to be with her.*" (MR, p. 123 (Millais' italics) (Exhibit 50)).

Example 27

85. Pomerance claims that Thompson copied her idea of John taking Effie to Scotland to help her get better, while in real life the sole purpose of the trip was for Millais to paint Ruskin's portrait. There is no copyright protection for this idea. In fact, Gray was often ill in London and surroundings. (MR, p. 27 (Exhibit 57)).

Example 28:

86. Pomerance claims that she and Thompson both have scenes of Millais and John "bonding" on the trip to Scotland. The scenes are again very dissimilar, because the two screenplays treat the pre-Scotland relationship between Millais and John differently. In *Effie*, John has "bonded" with Millais long before Scotland. He is shown early on as a champion of the Pre-Raphaelites and a patron of Millais (sc. 56, Royal Academy dinner). When the men are first shown in Scotland, they are fishing together and talk on a relaxed, friendly first-name basis. (Sc. 119). In the Pomerance work, Millais vainly pursues John's patronage and is essentially thrown out of the Ruskin house. (Sc. 71). In Scotland, the two men speak formally, referring to each as "Sir." (Sc. 99).

Example 33 [there are no Examples 29-32]:

87. Pomerance claims a similarity because her screenplay has a scene where Effie gets stuck in the mud and Millais rescues her. *Effie* has a scene where Millais, coming out of a boat, has fallen and hurt his nose, Blood is streaming down his face, Effie rushes to help him and falls with him into the mud. (Sc. 129). Pomerance asserts that the *Effie* scene copies her use of mud and is "not historical."

88. Once again, Pomerance is wrong. The "mud scene" in *Effie* comes from history. A letter from Millais reprinted in Millais and The Ruskins recounts his having struck his

forehead on rocks while swimming and having bled terribly. (MR, p. 70 (Exhibit 58)). Another letter of Effie's describes an actual fall in the mud:

I was returning home with Millais and coming to a very dirty mud bank I asked for his help; it was quite dark and he told me to walk on the edge of the grass. . . . [H]e had fast hold of my arm, when my feet went under me and down I fell into a cold mud bath. He fell too partly upon me. . . . (MR, p. 95 (Exhibit 59)).

Example 34

89. Pomerance also claims similarity in the fact that Effie's clothing gets wet in her screenplay, while Millais's clothing gets wet in the Thompson screenplay. Again, the scenes are entirely different. In the Pomerance screenplay, Effie tries drowning herself in a lake wearing the "Ophelia" dress; Millais pulls her out and says that she must get out of the wet clothes. She undresses, Millais sees her partly naked, and there is, in Pomerance's words "a tremendous sexual tension." (Sc. 100).

90. In *Effie*, Millais, unable to deal with his growing love for Effie and equal hatred for John, runs through the Scottish rain in frustration. (Sc. 143). This, and Thompson's other depictions of Millais, are drawn from the historical Millais, whom Ruskin described in a latter as someone who "takes races of seven or eight miles if he is in the humour . . . sometimes won't, or can't, eat any breakfast or dinner . . . Sometimes he is all excitement, sometimes depressed, sick and faint as a woman, always restless and unhappy. I think I never saw such a miserable person on the whole." (MR, p. 97 (Exhibit 60)).

91. When Millais returns to the cottage after running, Effie tells him he must disrobe or he will get sick; Millais responds that he is already sickened by John and asks how he can stop John's torture of her. Millais does not take off his clothes, and Effie says "There is nothing to be done...Please. Go to bed, Everett." (Sc. 144). John is then shown having heard the whole scene. While this scene has high emotion, there is no disrobing or nakedness, and no sexual

tension. It is a product of Thompson's own creative imagination, which owes nothing to Pomerance.

Example 36 [there is no Example 35] and "Ruskin warns Effie against leaving marriage."

92. Pomerance claims similarity because in her screenplay John sees Effie in Millais' arms through the trees (sc. 101); while in *Effie*, Effie sees a glimpse of Millais bathing naked through the trees. (Sc. 137).

93. As both screenplays have a sequences in which the main characters are in the Highlands of Scotland (as they were in real life), the coincidence that both would have a character spotting another through trees in a forest is not original or surprising. Motion picture shots taken through trees for atmosphere are very common. Thompson's depiction is in any event more striking than Pomerance's: men are often shown in movies ogling women from a distance, but the reverse situation is uncommon.

94. Likewise, the fact that John observed the growing affection between Effie and Millais and overheard them is historical fact or theory. Pomerance's assertion that Ruskin did not know what was going on is questionable. Millais wrote in a letter about Ruskin's "inquisitorial practice of noting down everything which could forward as an excuse for complaining against his own wife" (MR, p. 123 (Exhibit 50)); and Mary Luytens, a historian, asked in her book whether "Ruskin produce[d] notes of Effie's conversation and behaviour in the Highlands which made it plain that he knew more of what was going on than she had realised?" (MR, p.126 (Exhibit 61)).

Example 37

95. Pomerance claims that a scene in *Effie* of John “teaching Millais about poetry” is taken from *King* (which shows John asking whether Millais has read Chaucer) and is “not historical.”

96. In fact, in *Effie*, what Ruskin is asking Millais to read is Euclid, the Greek mathematician, not a poet. Moreover, the reference is taken directly from a letter from Ruskin, in which he states about Millais, “I thought to make him read Euclid and bring him back a meek and methodical man. I might as well have tried to make a Highland stream read Euclid, or be methodical.” (MR, p. 108 (Exhibit 62)).

Example 38

97. Pomerance claims an actionable similarity because *King* has a scene set in the Scottish cottage in which Millais, Mrs. Ruskin and Effie are shown playing cards, Millais is asked by Mrs. Ruskin how the painting of John is going, and then why he has lost his appetite. Millais responds that he has a slight headache because of the bright light earlier in the day (sc. 102). In *Effie*, Millais is shown eating with Effie and John). When John makes a slighting remark about women, Millais, shocked, drops his fork. John makes the sarcastic remark “You are not eating, Everett. Are you ill?” (Sc. 142). Millais walks out and begins running through the countryside, as described above.

98. *King* is historically inaccurate, but *Effie* is not, for Mrs. Ruskin did not go on the trip to Scotland. Moreover, it is a historical fact (observed by Ruskin in the letter quoted above (MR, p. 97 (Exhibit 60)) that Millais often lost his appetite, and was “sick and faint . . . restless and unhappy.”

Example 39

99. Pomerance claims trivial and fleeting similarities in the two screenplays' treatment of John and Effie's time in Venice.

100. (39a) The Pomerance screenplay shows Ruskin on his belly, drawing a detail from the Ducal Palace. Earlier versions of the Thompson screenplay, had a scene (sc. 93) where John sketched a detail near the floor of a church, in the middle of parishioners praying in the pews. This scene was omitted from the final version of *Effie* and was not filmed, so is irrelevant. In any event, it is historical fact that during his stays in Venice, Ruskin sketched churches and architectural details constantly and crawled around in the dust. (The Worlds of John Ruskin, p. 54 (Exhibit 63)).

101. (39b) The Thompson screenplay shows Effie happily dancing in a Venetian square with Rafael, the (fictional) Venetian who is attracted to her. (Sc. 101). In Pomerance's screenplay, Effie is shown dancing happily at a Venetian ball. (Sc. 64). That Gray was happy in Venice is a matter of indisputable historical fact. (See, e.g., Effie in Venice, p. 271 (Exhibit 64)) (letter from Gray talking about her enjoying Venice during Carnival). In any event, showing characters dancing when they are happy is a garden-variety literary device.

102. (39c) The Pomerance screenplay shows John overtly telling Effie that she is "behaving like a whore [and] that is how I will treat you." (Sc. 66). Pomerance claims that Thompson has copied this in a scene where John says to Effie (about Venice, but possibly directed at her): "I mean that once she was a Virgin and now she is a harlot addicted to nothing but pleasure and voluptuousness. A beautiful harlot but a harlot nonetheless." (Sc. 103).

103. John's speech in *Effie* is not based on Pomerance, but from Ruskin's own words and thoughts about Venice, as derived from historical and scholarly sources. Ruskin's own writing in The Stones of Venice, ch. I. p. 25 and ch. V. p. 149 (Exhibit 65), in which he describes

Renaissance Venice as “magnificent in her dissipation and graceful in her follies” and as “drunk with the wine of her fornication,” and in ch. VIII, p. 215 (Exhibit 66), stating that Venice passed from “pride to infidelity, and from infidelity to the unscrupulous *pursuit of pleasure*.” (Italics in original). *See also John Ruskin*, p. 442 (Exhibit 67) (Ruskin thought of Venice “as being feminine” and linked its decline “to the loss of the most beautiful feminine condition, which was chastity. Metaphors of pollution and defilement were always in his mind”).

“RUSKIN QUOTES” [not numbered by Pomerance]

104. Pomerance appears to believe that because she and Thompson both use quotes or paraphrase from Ruskin, there is an actionable similarity, even though the material quoted is different. As shown in the Joint Memorandum of Law, Pomerance has no right of ownership in Ruskin’s words.

“Love Theme”

105. Finally, Pomerance claims an actionable similarity in two dialogues supposedly showing a “love theme.” In fact, there is absolutely no resemblance between the scenes, and there is no “love theme” in *Effie*.

106. In *Effie*, in a scene at the beginning of the screenplay, Effie and John are looking at a sculpture of Daphne and Apollo, and Effie asks why the nymph is turning into a tree. John explains that Apollo is pursuing her with “overwhelming desire,” and to prevent him from “possess[ing] her purity, [she] turns herself into a laurel tree. In order to escape.” (Sc. 2). In The *Effie* scene shows not love, but a shared idealism and intellectual approach between the young Effie and John. The image of an older man (Apollo) wanting a young woman (Daphne) with an “overwhelming desire,” who “wants to possess her purity,” is an image that sets a central theme of the film *Effie* at the very start.

107. The image of the sculpture is also used in the Venice section where Effie brings John a daguerreotype of the statue (sc. 108), which bleeds immediately into the image of Effie and the Venetian Rafael (a man who wants to possess her) similarly positioned on a gondola. (Sc. 109). Daphne turning herself into a laurel tree to escape Apollo's desire is directly referenced when, after Effie rejects Rafael's advance, she hallucinates that her skin is turning into tree bark. (Sc. 112).

108. The scene that Pomerance cites in *King* bears no resemblance to anything in *Effie*. That scene takes place in the Scottish Highlands segment. The adult Effie is with Millais, looking at his painting of Ophelia. She says that she finds the scene sad, because "Death is the only way out for her....He does not love her." (Sc. 100). The Pomerance scene shows a desperate older Effie who feels trapped in her marriage and has just attempted suicide.

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